

# Office of the Independent Police Auditor

## Monthly Report

July 2012



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

August 13, 2012

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period July 1, 2012 through July 31, 2012. It is the intention of the OIPA to make this report and all subsequent reports in this series available at [www.bart.gov/policeauditor](http://www.bart.gov/policeauditor).<sup>1</sup>

### **Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded <sup>4</sup>	Number of Cases Appealed to OIPA <sup>5</sup>	Number of Cases Appealed by CRB <sup>6</sup>
June 27, 2011 – October 31, 2011	32	53	0	0	0
November 2011	11	60	0	0	0
December 2011	4	56	0	0	0
January 2012	6	58	0	0	0
February 2012	14	57	0	0	0
March 2012	7	61	0	1	0
April 2012	6	55	0	1	0
May 2012	10	54	0	0	0
June 2012	13	61	1	0	0
July 2012	7	58	0	0	0

### **Types of Cases Filed**

Citizen Complaints	3
Administrative Investigations	2
Comments of Non-Complaint	2
<b>TOTAL</b>	<b>7</b>

### **Citizen Complaints Received per Department**

OIPA	0
BART Police Department	3
<b>TOTAL</b>	<b>3</b>

### **Complaints/Investigations Initiated During Reporting Period**

#### **Actions Taken/# of Days Elapsed<sup>7</sup>**

During the month of July 2012, 3 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2012-058)*	Force; Bias Based Policing; Conduct Unbecoming an Officer; Courtesy; Procedure	An investigation was initiated.	51
2 (IA2012-055)	Bias Based Policing; Arrest or Detention; Conduct Unbecoming an Officer; Courtesy; Procedure	An investigation was initiated.	41
3 (IA2012-059)	Bias Based Policing; Arrest or Detention; Performance of Duty; Conduct Unbecoming an Officer; Courtesy	An investigation was initiated.	27

\*The Department's Office of Internal Affairs (IA) did not receive sufficient information until this month to determine that the allegations giving rise to this complaint had initially been raised on June 23, 2012 (which is why it is listed as received in this report). After making such a determination, IA will use June 23, 2012 as the date this complaint was received, as is indicated by the Number of Days Elapsed Since Complaint Filed.

During the month of July 2012, 2 Administrative Investigations were initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2012-056)	Criminal; Conduct Unbecoming an Officer	BART PD initiated an investigation.	42
2 (IA2012-057)	Performance of Duty; Conduct Unbecoming an Officer; Courtesy	BART PD initiated an investigation.	42

During the month of July 2012, 2 Comments of Non-Complaint were received by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2012-060)	Performance of Duty	An investigation was initiated.	24
2 (IA2012-062)	Performance of Duty; Courtesy	An investigation was initiated.	14

### **Complaints/Investigations Concluded During Reporting Period**

#### **Dispositions/# of Days Elapsed**

During the month of July 2012, 4 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition <sup>8</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2011-062)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Excessive Use of Force</li> <li>• Use of Force Reporting</li> <li>• Conduct Unbecoming an Officer</li> <li>• Unprofessional Conduct</li> <li>• Handling of Prisoners</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Excessive Use of Force – Unfounded</li> <li>• Use of Force Reporting – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Unprofessional Conduct – Unfounded</li> <li>• Handling of Prisoners – Unfounded</li> </ul>	314	281

	<u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Unprofessional Conduct</li> <li>• Handling of Prisoners</li> </ul> <u>Civilian #1</u> <ul style="list-style-type: none"> <li>• Excessive Use of Force</li> <li>• Use of Force Reporting</li> <li>• Conduct Unbecoming an Officer</li> <li>• Handling of Prisoners</li> </ul>	<u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Unprofessional Conduct – Unfounded</li> <li>• Handling of Prisoners – Unfounded</li> </ul> <u>Civilian #1</u> <ul style="list-style-type: none"> <li>• Excessive Use of Force – Unfounded</li> <li>• Use of Force Reporting – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Handling of Prisoners – Unfounded</li> </ul>		
2 (IA2011-065)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Excessive/Improper Use of Force</li> <li>• Unlawful Detention</li> <li>• Notifying Dispatch of Status</li> <li>• Violating Department Safety Standards</li> <li>• Vehicle Pursuit Policy</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Excessive/Improper Use of Force – Sustained</li> <li>• Unlawful Detention – Not Sustained</li> <li>• Notifying Dispatch of Status – Not Sustained</li> <li>• Violating Department Safety Standards – Sustained</li> <li>• Vehicle Pursuit Policy – Unfounded</li> </ul>	290	256
3 (IA2011-072)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Discourtesy/Conduct Unbecoming an Officer</li> <li>• Performance of Duty</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Discourtesy/Conduct Unbecoming an Officer – Unfounded</li> <li>• Performance of Duty – Not Sustained</li> </ul>	273	242

	<u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Discourtesy/Conduct Unbecoming an Officer</li> </ul>	<u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Discourtesy/Conduct Unbecoming an Officer – Unfounded</li> </ul>		
4 (IA2012-007)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Excessive Force</li> <li>• Discourtesy</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Excessive Force – Unfounded</li> <li>• Discourtesy – Unfounded</li> </ul>	187	145

During the month of July 2012, 2 Administrative Investigations were concluded by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2011-051)*	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct, Sleeping on Duty, Intoxicants</li> </ul> <u>Police Officer #2 (retired)</u> <ul style="list-style-type: none"> <li>• Truthfulness</li> </ul> <u>Police Officer #3</u> <ul style="list-style-type: none"> <li>• Supervision: Reporting/Addressing Misconduct</li> </ul> <u>Police Officer #4</u> <ul style="list-style-type: none"> <li>• Supervision: Reporting/Addressing Misconduct</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct, Sleeping on Duty, Intoxicants – Not Sustained</li> </ul> <u>Police Officer #2 (retired)</u> <ul style="list-style-type: none"> <li>• Truthfulness – Not Sustained</li> </ul> <u>Police Officer #3</u> <ul style="list-style-type: none"> <li>• Supervision: Reporting/Addressing Misconduct – Not Sustained</li> </ul> <u>Police Officer #4</u> <ul style="list-style-type: none"> <li>• Supervision: Reporting/Addressing Misconduct – Not Sustained</li> </ul>	392	339

2 (IA2012-027)	<u>Civilian #1</u> • Unprofessional Conduct	<u>Civilian #1</u> • Unprofessional Conduct – Not Sustained	136	102
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\*This complaint was closed in June 2012 but was not recorded as such in time for that month's report. It has therefore been included here.

During the month of July 2012, 4 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2012-037)	Courtesy	Supervisory Referral	87	49
2 (IA2012-045)	Courtesy	Supervisory Referral	63	25
3 (IA2012-048)	Procedure	Supervisory Referral	51	28
4 (IA2012-049)	Courtesy	Supervisory Referral	49	8

### **Complaints/Investigations Concluded During Previous Reporting Period**

#### **Dispositions/# of Days Elapsed**

During the month of June 2012, 1 Appeal of Internal Affairs Investigation Findings was completed by OIPA. This was mistakenly left out of the June report and is therefore included here:

Appeal # (OIPA Case #)	Nature of Initial Complaint (with Findings)	Disposition	Number of Days Elapsed Since Appeal Filed	Number of Days Taken to Complete Appeal
1 (OIPA 12-14)	<ul style="list-style-type: none"> <li>Manipulation of facts/evidence and a train operator – Unfounded</li> <li>Unprofessional conduct – Not Sustained</li> </ul>	OIPA did not disagree with the Internal Affairs findings in this case	161	92

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<sup>1</sup> In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to the OIPA for further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

<sup>2</sup> This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)).

<sup>3</sup> This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both), Comments of Non-Complaint, and Administrative Investigations.

<sup>4</sup> This number includes all cases completed by OIPA during the reporting period that are required by the BART Citizen Oversight Model to be submitted to the Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA’s investigative jurisdiction.

<sup>5</sup> This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department’s internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

<sup>6</sup> This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

<sup>7</sup> In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint and the date of the report (as noted on the front page).

<sup>8</sup> In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)